

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

DYLAN CORRAL,

Defendant.

CASE NO. 3:22-cr-00048-JCC-TLF

REDACTED FINDINGS AND
RECOMMENDATION ON
DEFENDANT'S REQUEST FOR
SUBSTITUTE COUNSEL; WITH
PROPOSED FINDINGS OF FACT
PURSUANT TO FED. R. CRIM. P. 59

NOTED FOR: JUNE 23, 2023

The District Court has referred, under Fed. R. Crim. P. 59, the government's motion to determine defendant's mental competency pursuant to 18 U.S.C. §§ 4241, 4247. Dkt. 33, 34, 38. The Honorable John C. Coughenour ordered a competency evaluation under 18 U.S.C. §§ 4241(b), 4247(b)–(c). Dkt. 17. The Court ordered a hearing, which was held on June 5, 2023. In a separate Findings and Recommendation, this Court recommended that Judge Coughenour should find the defendant is presently able to “consult with [their] counsel with a reasonable degree of rational understanding and a rational, as well as factual understanding of the

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1 proceedings.” *Dusky v. United States*, 362 U.S. 402, 402 (1960).

2 Before the competency hearing, Defendant Dylan Corral submitted a request for
3 a status hearing (ex parte) concerning his request for substitution of counsel. Dkt. 69.
4 The Government did not take any position on this request, except to make a statement
5 that the hearing should not be held remotely. Dkt. 70.

6 On June 5, 2023, the Court held a hearing concerning Defendant Dylan Corral’s
7 motion for ex parte status conference and request for substitution of counsel. During the
8 hearing, which was conducted in a closed courtroom, with a sealed transcript, and ex
9 parte, the Court conducted the inquiry required under *U.S. v. Ceja*, 23 F.4th 1218, 1225
10 (9th Cir. 2022) and *U.S. v. Adelzo-Gonzalez*, 268 F.3d 772, 777 (9th Cir. 2001). Under
11 *U.S. v. Gonzalez*, 113 F.3d 1026, 1028-1029 (9th Cir. 1997), the Court closed the
12 hearing, and has redacted a portion of this Findings and Recommendation, after
13 reviewing the facts as required by *United States v. Doe*, 870 F.3d 991, 997 (9th Cir.
14 2017).

16 DISCUSSION

17 A. Legal Standards

18 Pursuant to Fed. R. Crim. P. 59, and United States District Court for the Eastern
19 District of California Local Criminal Rule 430.1, this Court may, on referral from the
20 District Court, conduct a hearing on pretrial motions in a felony case, provide a
21 recommendation and include any proposed findings of fact. The District Court reviews
22 the Magistrate Judge’s Findings and Recommendation under a de novo standard of
23 review if there are Constitutional issues to be resolved. *United States v. Raddatz*, 447

1 U.S. 667, 683 (1980); *U.S. v. Rivera-Guerrero*, 377 F.3d 1064, 1070-1071 (9th Cir.
2 2004).

3 When a defendant requests substitution of appointed counsel and there are also
4 issues raised about whether the defendant is competent to stand trial, the court may
5 consider whether the alleged mental disease or defect is connected to the difficulties
6 with their attorney. *See United States v. Telles*, 18 F. 4th 290, 296-300 (9th Cir. 2021).

7 If a defendant files a lawsuit or submits a grievance about their attorney's
8 representation, this may be good cause for substitution of counsel – but the mere filing
9 of a lawsuit or grievance is not dispositive. *United States v. Williamson*, 859 F.3d 843,
10 855-861 (10th Cir. 2017). To justify a substitution of counsel, the “defendant must show
11 that his attorney possessed an actual conflict of interest with his client and that his
12 performance was adversely affected due to that conflict.” *Id.* at 857 (citing *United States*
13 *v. Holman*, 314 F.3d 837, 845-846 (7th Cir. 2002)).

14 “A trial judge is required to order a substitution of counsel if, after a hearing, it is
15 demonstrated that there is a breakdown in the attorney-client relationship or that ‘an
16 actual conflict of interest existed.’” *Jackson v. Ylst*, 921 F.2d 882, 887-888 (9th Cir.
17 1990) (citing *Wood v. Georgia*, 450 U.S. 261, 273-274 (1981)). Lack of trust between
18 client and the criminal defense lawyer is not a basis for overturning the appointment of
19 counsel. *Plumlee v. Masto*, 512 F.3d 1204, 1211 (9th Cir. 2008) (en banc). Even if the
20 defendant explicitly disapproves of the trial lawyer's tactics, or fails to understand the
21 defense attorney's tactics, this does not constitute a basis for finding an
22 unconstitutionally irreconcilable conflict. *Michaels v. Davis*, 51 F.4th 904, 939 (9th Cir.
23 2022); *Schell v. Witek*, 218 F.3d 1017, 1026 n.8 (9th Cir. 2000).

1 The United States Court of Appeals for the Ninth Circuit considers the following
2 factors when reviewing a trial court's denial of a motion to substitute counsel: a.
3 timeliness of the motion; b. adequacy of the court's inquiry; and c. whether there was a
4 total lack of communication between attorney and client that prevented an adequate
5 defense. *U.S. v. Rogers*, 769 F.2d 1418, 1423-1424 (9th Cir. 1985). In conducting a
6 hearing on a motion for substitute counsel, the court must conduct "such necessary
7 inquiry as might ease the defendant's dissatisfaction, distrust, and concern." *U.S. v.*
8 *Adelzo-Gonzalez*, 268 F.3d 772, 777 (9th Cir. 2001) (quoting *United States v. Garcia*,
9 924 F.2d 925, 926 (9th Cir. 1991)).

10 Depending on the context of the request for substitution of counsel, the court
11 may need to ask both open-ended questions, and precise, targeted questions, into the
12 issues, to ascertain

- 13 (1) the depth of any conflict between defendant and counsel,
- 14 (2) the extent of any breakdown in communication,
- 15 (3) how much time may be necessary for a new attorney to prepare, and
- 16 (4) any delay or inconvenience that may result from substitution."

17 *Adelzo-Gonzalez*, at 777 (citing *U.S. v. D'Amore*, 56 F.3d 1202, 1205 (9th Cir. 1995)).

18 The Sixth Amendment does not guarantee a "meaningful relationship" between
19 the accused and their defense counsel. *Morris v. Slappy*, 461 U.S. 1, 13-14 (1983).
20 Defense counsel must "function in the active role of an advocate" and the defendant has
21 a right to competent counsel. *U.S. v. Cronin*, 466 U.S. 648, 655 (1984); *Entsminger v.*
22 *Iowa*, 386 U.S. 748, 751 (1967). A defendant's right to secure counsel of choice is a
23 qualified right and applies only to persons who can afford to hire their own attorney.

1 *Schell v. Witek*, 218 F.3d 1017, 1025 (9th Cir. 2000) (en banc). Although an indigent
 2 defendant is not necessarily entitled to the appointed counsel of their own choosing, the
 3 court must inquire into the nature and extent of any conflict between the defense
 4 attorney and the defendant if the circumstances warrant inquiry. *Hendricks v. Zenon*,
 5 993 F.2d 664, 670-671 (9th Cir. 1993).

6 7 **B. Proposed findings of fact**

8 Defendant Dylan Corral stands charged under 18 U.S.C. § 876(c) with mailing
 9 interstate threats. Dkt. 1. After the Court ordered a competency evaluation, Dr. Tiffany
 10 Smith, a forensic psychologist at the U.S. Bureau of Prisons' Metropolitan Detention
 11 Center in Los Angeles, reviewed Mr. Corral's records and considered other information
 12 such as phone calls that were being monitored by the Bureau of Prisons. Dkt. 33, Ext.
 13 A; Dkt. 27 (Report of Dr. Smith – admitted into evidence as Ex. B during the hearing).
 14 Although Mr. Corral initially agreed to psychological testing, he later decided not to
 15 participate in any interview or other testing by Dr. Smith. Dkt. 27 at 1,13.

16 The remaining facts discussed in this Findings and Recommendation are
 17 redacted, because the Court closed the hearing and sealed the record, to protect the
 18 defendant's Fifth and Sixth Amendment rights to due process and to effective
 19 assistance of counsel. To take the most narrowly tailored approach under *United States*
 20 *v. Doe*, 870 F.3d 991, 997 (9th Cir. 2017), the Court is publishing as much of this
 21 Findings and Recommendation as possible, while preserving the defendant's
 22 Constitutional rights by protecting attorney-client privilege, and work product protected
 23 information.

[Redacted section of the R & R:]

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1 [REDACTED]

2 [REDACTED]

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6 [REDACTED]

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18 [REDACTED] [REDACTED]

19 [REDACTED]

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[end of redactions]

C. Legal analysis and recommended disposition

The Court should deny without prejudice Mr. Corral's request for substitution of counsel. Although Mr. Corral contends that he does not trust his attorney, and that his lawyer should prepare for trial differently, the disagreements are about tactics and trial preparation strategy. There is neither hostility nor is there a complete breakdown in communication.

If the Court finds that Mr. Corral is incompetent to stand trial, then the motion to substitute counsel would be reviewed in a very different context. A person who is not presently competent to stand trial may not have the capacity to consult with their attorney or assist in their defense -- and concerns about counsel might be causally related to the mental illness or defect -- therefore the motion to substitute counsel would potentially be intertwined with the competency issues.

If the Court decides that Mr. Corral is competent to stand trial, then the Court should also find that no substitution of counsel is warranted. Mr. Corral is able to effectively consult with Mr. Beevers, even when they disagree about trial preparation tactics and strategy. Mr. Beevers knows about the grievance that Mr. Corral has filed against him, but neither Mr. Beevers nor Mr. Corral have had a complete breakdown in communication. Mr. Beevers stated that the grievance filed against him by his client has not affected his activities in preparing the defendant's case for trial.

1 The Court should find that any conflict between defendant and counsel in this
2 case has not caused a serious breakdown in communication; the time that may be
3 necessary for a new attorney to prepare if the attorney is not with the Federal Public
4 Defender's Office may be substantial; and, although there are still months remaining
5 before the trial date, any delay or inconvenience that may result from substitution would
6 nonetheless be a factor that weighs against substitution of counsel. This is a case
7 where a "meaningful relationship" between the defendant and the defense attorney may
8 be strained due to Mr. Corral's lack of trust in his attorney and disagreement about
9 tactics and investigatory work, but there is no evidence of an irreconcilable breakdown
10 in communication, nor is there any evidence of actual conflict of interest or prejudice
11 from a conflict of interest.

12 CONCLUSION

13 The defendant's motion for a status conference having been granted, and the
14 hearing having been held on June 5, 2023 to provide the defendant with an opportunity
15 to explain his concerns to the Court, and for the Assistant Federal Public Defender, Mr.
16 Beevers, to also provide information about their working relationship, the Court should
17 deny Mr. Corral's request for substitution of counsel, without prejudice. Pursuant to 28
18 U.S.C. § 636(b)(1), (b)(3) and Fed. R. Crim. P. 59, the parties shall have fourteen (14)
19 days from service of this Report to file written objections. See *also* United States
20 District Court for the Eastern District of California Local Rule of Criminal Procedure
21 430.1(j).

22 The Magistrate Judge's Findings and Recommendation will be reviewed *de novo*.
23 *U.S. v. Rivera-Guerrero*, 377 F.3d 1064 (9th Cir. 2004). Failure to file objections will
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1 result in a waiver of those objections for purposes of *de novo* review by the district
2 judge, see 28 U.S.C. § 636(b)(1)(C), and can result in a waiver of those objections for
3 purposes of appeal. See *Thomas v. Arn*, 474 U.S. 140, 142 (1985); *Miranda v.*
4 *Anchondo*, 684 F.3d 844, 848 (9th Cir. 2012) (citations omitted).

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7 The Clerk is directed to set the matter for consideration on **June 23, 2023**, as
8 noted in the caption.

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10 Dated this 6th day of June, 2023.

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12 Theresa L. Fricke
13 United States Magistrate Judge
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